

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 935

Introduced by Assembly Members Feuer and Ruskin

February 26, 2009

An act ~~relating to nanomaterials~~ to amend Section 25503.5 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as amended, Feuer. ~~Nanomaterials.~~ *Hazardous materials: business plans and inventories: nanomaterials.*

(1) Existing law generally requires a business that handles a hazardous material to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material, with specified exceptions. Existing law specifies the contents of the business plan, including an inventory, and requires it to be submitted to the administering agency, as defined. A knowing violation of those requirements, upon reasonable notice of the violation, is a crime.

This bill would add to those businesses that are required to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material a business that handles a hazardous material or a mixture containing a hazardous material that has any quantity of a substance that is a manufactured nanomaterial, as defined. By adding to the businesses subject to the business plan requirements, the bill would create a new crime, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law regulates the generation, use, and disposal of certain hazardous materials.~~

~~This bill would state the Legislature's intent to enact legislation to address emerging toxicity issues surrounding the increasingly widespread utilization of engineered nanomaterials.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 25503.5 of the Health and Safety Code*
2 *is amended to read:*

3 25503.5. (a) (1) A business, except as provided in subdivisions
4 (b), (c), and (d), shall establish and implement a business plan for
5 emergency response to a release or threatened release of a
6 hazardous material in accordance with the standards prescribed in
7 the regulations adopted pursuant to Section 25503, if the business
8 handles a hazardous material or a mixture containing a hazardous
9 material that has a quantity at any one time during the reporting
10 year that is any of the following:

11 (A) Equal to, or greater than, a total weight of 500 pounds or a
12 total volume of 55 gallons.

13 (B) Equal to, or greater than, 200 cubic feet at standard
14 temperature and pressure, if the substance is compressed gas.

15 (C) If the substance is a radioactive material, it is handled in
16 quantities for which an emergency plan is required to be adopted
17 pursuant to Part 30 (commencing with Section 30.1), Part 40
18 (commencing with Section 40.1), or Part 70 (commencing with
19 Section 70.1), of Chapter 1 of Title 10 of the Code of Federal
20 Regulations, or pursuant to any regulations adopted by the state
21 in accordance with those regulations.

22 (D) (i) *Any quantity of a substance that is a manufactured*
23 *nanomaterial.*

24 (ii) *For purposes of this subparagraph, the following definitions*
25 *apply:*

1 (I) “*Manufactured nanomaterial*” means a nanomaterial that
2 is intentionally produced by a manufacturing process.

3 (II) “*Nanomaterial*” means a material that is either a
4 nano-object or is an aggregation or agglomeration of nano-objects.

5 (III) “*Nano-object*” means a material confined in one, two, or
6 three dimensions at the nanoscale.

7 (IV) “*Nanoscale*” means a size range between 1 nanometer and
8 300 nanometers.

9 (2) In meeting the requirements of this subdivision, a business
10 may, if it elects to do so, use the format adopted pursuant to Section
11 25503.4.

12 (b) (1) Oxygen, nitrogen, and nitrous oxide, ordinarily
13 maintained by a physician, dentist, podiatrist, veterinarian, or
14 pharmacist, at his or her office or place of business, stored at each
15 office or place of business in quantities of not more than 1,000
16 cubic feet of each material at any one time, are exempt from this
17 section and from Section 25505. The administering agency may
18 require a one-time inventory of these materials for a fee not to
19 exceed fifty dollars (\$50) to pay for the costs incurred by the
20 agency in processing the inventory forms.

21 (2) (A) Lubricating oil is exempt from this section and Sections
22 25505 and 25509, for a single business facility, if the total volume
23 of each type of lubricating oil handled at that facility does not
24 exceed 55 gallons and the total volume of all types of lubricating
25 oil handled at that facility does not exceed 275 gallons, at any one
26 time.

27 (B) For purposes of this paragraph, “lubricating oil” means any
28 oil intended for use in an internal combustion crankcase, or the
29 transmission, gearbox, differential, or hydraulic system of an
30 automobile, bus, truck, vessel, plane, heavy equipment, or other
31 machinery powered by an internal combustion or electric powered
32 engine. “Lubricating oil” does not include used oil, as defined in
33 subdivision (a) of Section 25250.1.

34 (c) (1) Hazardous material contained solely in a consumer
35 product for direct distribution to, and use by, the general public is
36 exempt from the business plan requirements of this chapter unless
37 the administering agency has found, and has provided notice to
38 the business handling the product, that the handling of certain
39 quantities of the product requires the submission of a business

1 plan, or any portion thereof, in response to public health, safety,
2 or environmental concerns.

3 (2) In addition to the authority specified in paragraph (4), the
4 administering agency may, in exceptional circumstances, following
5 notice and public hearing, exempt from the inventory provisions
6 of this chapter ~~any a~~ hazardous substance specified in subdivision
7 (p) of Section 25501 if the administering agency finds that the
8 hazardous substance would not pose a present or potential danger
9 to the environment or to human health and safety if the hazardous
10 substance was released into the environment. The administering
11 agency shall specify in writing the basis for granting ~~any an~~
12 exemption under this paragraph. The administering agency shall
13 send a notice to the office within five days from the effective date
14 of ~~any an~~ exemption granted pursuant to this paragraph.

15 (3) The administering agency, upon application by a handler,
16 may exempt the handler, under conditions that the administering
17 agency determines to be proper, from ~~any a~~ portion of the business
18 plan, upon a written finding that the exemption would not pose a
19 significant present or potential hazard to human health or safety
20 or to the environment or affect the ability of the administering
21 agency and emergency rescue personnel to effectively respond to
22 the release of a hazardous material, and that there are unusual
23 circumstances justifying the exemption. The administering agency
24 shall specify in writing the basis for ~~any an~~ exemption under this
25 paragraph.

26 (4) The administering agency, upon application by a handler,
27 may exempt a hazardous material from the inventory provisions
28 of this chapter upon proof that the material does not pose a
29 significant present or potential hazard to human health and safety
30 or to the environment if released into the workplace or
31 environment. The administering agency shall specify in writing
32 the basis for ~~any an~~ exemption under this paragraph.

33 (5) An administering agency shall exempt a business operating
34 a farm for purposes of cultivating the soil or raising or harvesting
35 ~~any an~~ agricultural or horticultural commodity from filing the
36 information in the business plan required by subdivisions (b) and
37 (c) of Section 25504 if all of the following requirements are met:

38 (A) The handler annually provides the inventory of information
39 required by Section 25509 to the county agricultural commissioner
40 before January 1 of each year.

1 (B) Each building in which hazardous materials subject to this
2 chapter are stored is posted with signs, in accordance with
3 regulations that the office shall adopt, that provide notice of the
4 storage of any of the following:

- 5 (i) Pesticides.
- 6 (ii) Petroleum fuels and oil.
- 7 (iii) Types of fertilizers.

8 (C) Each county agricultural commissioner forwards the
9 inventory to the administering agency within 30 days from the
10 date of receipt of the inventory.

11 (6) The administering agency shall exempt a business operating
12 an unstaffed remote facility located in an isolated sparsely
13 populated area from the hazardous materials business plan and
14 inventory requirements of this article if the facility is not otherwise
15 subject to the requirements of applicable federal law, and all of
16 the following requirements are met:

17 (A) The types and quantities of materials onsite are limited to
18 one or more of the following:

19 (i) Five hundred standard cubic feet of compressed inert gases
20 (asphyxiation and pressure hazards only).

21 (ii) Five hundred gallons of combustible liquid used as a fuel
22 source.

23 (iii) Two hundred gallons of corrosive liquids used as
24 electrolytes in closed containers.

25 (iv) Five hundred gallons of lubricating and hydraulic fluids.

26 (v) Twelve hundred gallons of flammable gas used as a fuel
27 source.

28 (B) The facility is secured and not accessible to the public.

29 (C) Warning signs are posted and maintained for hazardous
30 materials pursuant to the California Fire Code.

31 (D) A one-time notification and inventory is provided to the
32 administering agency along with a processing fee in lieu of the
33 existing fee. The fee shall not exceed the actual cost of processing
34 the notification and inventory, including a verification inspection
35 if necessary.

36 (E) If the information contained in the initial notification or
37 inventory changes and the time period of the change is longer than
38 30 days, the notification or inventory shall be resubmitted within
39 30 days to the administering agency to reflect the change, along
40 with a processing fee, in lieu of the existing fee, that does not

1 exceed the actual cost of processing the amended notification or
2 inventory, including a verification inspection, if necessary.

3 (F) The administering agency shall forward a copy of the
4 notification and inventory to those agencies that share responsibility
5 for emergency response.

6 (G) The administering agency may require an unstaffed remote
7 facility to submit a hazardous materials business plan and inventory
8 in accordance with this article if the agency finds that special
9 circumstances exist such that development and maintenance of the
10 business plan and inventory is necessary to protect public health
11 and safety and the environment.

12 (d) Onpremise use, storage, or both, of propane in an amount
13 not to exceed 300 gallons that is for the sole purpose of heating
14 the employee working areas ~~with~~ *within* that business is exempt
15 from this section, unless the administering agency finds, and
16 provides notice to the business handling the propane, that the
17 handling of the onpremise propane requires the submission of a
18 business plan, or ~~any~~ *a* portion thereof, in response to public health,
19 safety, or environmental concerns.

20 (e) The administering agency shall provide all information
21 obtained from completed inventory forms, upon request, to
22 emergency rescue personnel on a 24-hour basis.

23 (f) The administering agency shall adopt procedures to provide
24 for public input when approving ~~any applications~~ *an application*
25 submitted pursuant to paragraph (3) or (4) of subdivision (c).

26 *SEC. 2. No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution because*
28 *the only costs that may be incurred by a local agency or school*
29 *district will be incurred because this act creates a new crime or*
30 *infraction, eliminates a crime or infraction, or changes the penalty*
31 *for a crime or infraction, within the meaning of Section 17556 of*
32 *the Government Code, or changes the definition of a crime within*
33 *the meaning of Section 6 of Article XIII B of the California*
34 *Constitution.*

35 ~~SECTION 1. The Legislature intends to enact legislation to~~
36 ~~address emerging toxicity issues surrounding the increasingly~~
37 ~~widespread utilization of engineered nanomaterials. Specifically,~~
38 ~~the Legislature intends to enact legislation to ensure all of the~~
39 ~~following:~~

- 1 ~~(a) Users of engineered nanomaterials utilize best practices to~~
- 2 ~~avoid exposure to workers, the general public, end users, and the~~
- 3 ~~environment.~~
- 4 ~~(b) Consumers of products containing engineered nanomaterials~~
- 5 ~~are made aware of the presence of those materials prior to purchase.~~
- 6 ~~(c) Appropriate testing methods are provided by manufacturers~~
- 7 ~~or producers of engineered nanomaterials to determine the presence~~
- 8 ~~and potential for toxicity of those materials.~~